Supreme Court, U.S.
FILED
0417 22 JUN 20 2005
OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

MARIANNE WILLMAN and
MERVIN C. WILLMAN (Estate of),

Petitioners,

v.

ST. PAUL FIRE & MARINE INSURANCE CO.,

Respondent.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

DANIEL C. WILLMAN (P55867)
P.O. Box 118
South Lyon, MI 48178
(248) 437-0209 (248) 437-0095 – Fax
Attorney for Petitioners

QUESTION PRESENTED

I.

Does the exclusive remedy provision of state worker's compensation statutes (employment relationship) also extend to insurance carriers responsible for providing medical care under a state workers compensation statute? Or can suit and other claims be extended in other venues outside of worker's compensation boards for intentional interference with the providing of necessary medical care, goods and services?[1]

1

Estate of Blakely by Blakely v. Abestos Corp., LTD., 766 F.Supp 721 (E.D.Ark 1991) In its most extreme expression the California Supreme Court declared that the workman's compensation law was an exclusive remedy *only* when the duty arose solely from the employment relationship. *Bell v. Industrial Vangas, Inc., 30 Cal.3d 268, 179 Cal.Rptr. 30. 673 P.2d 266 (1981).* At 724

Stump v. Crawford & Co. 726 F.Supp 228 (N.D. Ind 1989).

Neither the fraudulent misrepresentation, nor the emotional distress, nor the additional physical injuries arose"out of and in the course of employment" . . . . It is abundantly clear to this court that plaintiff's claim is not precluded by the exclusive remedy contained in the Worker's Compensation Act At 726 F.Supp 234.

Cavalier MFG v. Wausau, 211 Mich App 330, 535 N.W.2d 583 (1995):"True intentional torts," for which both worker's compensation benefits and tort damages might be awarded . . . . are generally those that do not implicate the hazards of the workplace, but rather involve other interest. At 339.

QUESTION PRESENTED

II.

Because worker's compensation is a creature of government law do worker's compensation benefits (including medical care) raise to the level of a governmental entitlement? Further must the distribution and denial of such benefits meet federal requirements of substantive and procedural due process? And if so may suit be brought in federal court in regard to the distribution and denial of such benefits? Lastly can diversity of citizenship alone be enough to bring such matters into federal court?

PARTIES TO THE PROCEEDINGS AND RULE 29.6 STATEMENT

The names of all the parties below before the United States Sixth Circuit Court of Appeals are contained within the case caption.

Petitioners Marianne Willman and Mervin C. Willman (Estate of) pursuant to S.Ct. Rule 29.6, state there is no parent or subsidiary company to be listed.

The Respondent before the Sixth Circuit and This Court is St. Paul Fire & Marine Insurance Company. Suit was brought against Respondent in its official capacity.

TABLE OF CONTENTS

Page

QUESTION PRESENTED ..... i-ii

PARTIES TO THE PROCEEDINGS AND

RULE 29.6 STATEMENT iii

TABLE OF AUTHORITIES ..... viii-xv

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL AND

STATUTORY PROVISIONS 2

STATEMENT OF THE CASE 2-5

SUMMARY OF ARGUMENT 5-7

REASONS FOR GRANTING THE WRIT 7-30

I. THE ACTS COMPLAINED OF DID NOT ARISE OUT OF PETITIONER MERVIN C. WILLMANS' EMPLOYMENT BUT OUT OF A WILFUL DENIAL OF REASONABLE AND NECESSARY MEDICAL CARE AND ARE ACTIONABLE.

..... 7-28

a. The District Court had Proper Subject Matter Jurisdiction and Should have Decided the Matter Under the Heightened Pleading Standard of F.R.C.P. 56 instead of a F.R.C.P. 12(b) (6) Analysis.

..... 7-9

TABLE OF CONTENTS
REASONS FOR GRANTING THE WRIT-Continued

Page

b. Precedent Exists for Bringing Claims of Intentional Infliction of Emotional Distress in Conjunction with Pendant Workers' Compensation Claims. Dismissal Was in Error, F.R.C.P 56 Analysis per *Rmi Titanium v. Westinghouse*, 78 F.3d 1125, 34 Fed. R. Serv. 3d 1288, (6th Cir. 1996) Controls. 9-17

c. Petitioners' 14th Amendment Claims were improperly Dismissed. 18-28

CONCLUSION 28-30

TABLE OF CONTENTS-Continued
APPENDICES

Page

APPENDIX A:
Final Opinion of
The Sixth Circuit Court of Appeals
Filed 3/22/05 ..... A1-A2

APPENDIX B:
Order of the United States
District Court for the Eastern District, Southern Division of
Michigan dismissing Petitioners' case
Filed 2/17/04 ..... B1-B6

APPENDIX C:
District Court Order directing Plaintiffs
to Show Cause and Granting
Defendant Opportunity to Respond
Filed 1/26/04 ..... C1-C3

APPENDIX D:
ARTICLE III. section 2. ..... D1

ARTICLE VI. section 2. ..... D1

14th AMENDMENT XIV [1868] section 1. ..... D1

28 U.S.C. § 1331 ..... D1

APPENDIX E:
Michigan "Worker's Disability Compensation Act of
1969"1969 PA 317 ..... E1-E13

TABLE OF CONTENTS-Continued
APPENDICES

Page

APPENDIX F:
Public Acts of the Legislature of the
State of Michigan
Passed at the Regular Session of 1919
Act 64 Part Ii. Sec.6. ..... F1

APPENDIX G:
Medical Peer Review Respondent Solicited
Which Supports Petitioners' Position Sec.6. ..... G1-G2

APPENDIX H:
Respondent's agent Kimberly Kaine's
letter claiming Petitioners' request for Medical peer review reports in regard to his own physical condition was an unreasonable request H1-10

TABLE OF AUTHORITIES

CASES **Page**

Federal Cases

Adams Fruit Co. v. Barrett,
494 U.S. 638, 110 S.Ct. 1384, 108 L.Ed.2d 585 (1990) 12

Anderson v. Liberty Lobby,
477 U.S. 242,106 S.Ct. 2505, 91 L.Ed2d 202 (1986) ... 17

Atlas Concrete Pipe, Inc. v. Roger J. Au & Sons,
669 F.2d 905, 908 (6th Cir. 1982) 17

Beach v. Owens-Corning Fiberglass Corp,
728 F.2d 407 (7th Cir. 1984). 7

Begay v. Kerr-McGee Corp ,
682 F.2d 1311 (9th Cir. 1982) 7-8

Board of Regents v. Roth,
408 U.S. 564, 92 S.Ct 2701, 33 L.Ed 2d 548, (1972). 18, 29

Conely v. Gibson,
355 U.S. 41, 78 S.Ct. 99, 2 L.Ed2d 80 (1957) 17

Conover v. Montemuro,
477 F.2d 1073 (Rehearing En Banc 3rd. Cir. 1973) 22

Daniels v. Williams,
474 U.S. 327, 106 S.Ct. 662, 88 L.Ed.2d 662 (1986) ... 19

Davis v. Liberty Mutual. Ins. Co.,
840 F.Supp.90 (E.D.Mo. 1993) 10

TABLE OF AUTHORITIES-Continued

CASES **Page**

Federal Cases-Continued

Estate of Blakely by Blakely v. Abestos Corp., LTD.,
766 F.Supp 721 (E.D.Ark 1991) 10-11

Globe Newspaper Company v. Superior Court For the County Of Norfolk,
457 U.S. 596,102 S.Ct 2613, 73 L.Ed.2d 248 (1982) ... 29

Glockzin v. Nortek Inc.,
815 F.Supp 1050 (W.D.Mich 1992) 10

Goldberg v. Kelly,
397 U.S. 254, 90 S.Ct. 1011,
25 L.Ed. 2d 287, (1970) 18, 29

Hagens v. Lavine,
415 U.S. 528, 94 S.Ct. 1372 39 L.Ed.2d 577 (1974) ... 20

Hirase-Doi v. U.S. West Communications, Inc.,
61 F.3d 777 (1995) 10

Howard v. Grinage,
82 F.3d 1343, 1349, (6th Cir. 1996) 19, 30

Karcher v. Emerson Elec. Co.,
94 F.3d 502 (Cir.8th 1996) rehearing and suggestion for rehearing denied, certiorari denied 117 S.Ct 1692,
520 U.S. 1210, 137 L.Ed.2d 820 22

TABLE OF AUTHORITIES-Continued

CASES **Page**

Federal Cases-Continued

Kelly v. Caswell & Co.,
883 F.Supp. 189 (E.D.Mich 1995) 10

Lewis v. Kugler,
446 F.2d 1343 (3rd Cir. 1971) 23

Marbury v. Madison ,
5 U.S. (1Cranch) 137, 2 L.Ed. 60 (1803) 20

MCI Telecommunications Corp v. Teleconcepts, Inc,
71 F.3d 1086 (3rd Cir. 1995) 12

Pennsylvania Department of Corrections, et al., v. Yeskey,
524 U.S. 206, 118 S.Ct 1952 (1998) 24

Regents v. Roth, 408 US 564, 92 S.Ct 2701, 33 L.Ed 2d 548,
(1972) 18, 29

Rmi Titanium v. Westinghouse,
78 F.3d 1125, 34 Fed. R. Serv. 3d 1288,
(6th Cir. 1996) 8-9

Roberts v. Roadway Exp., Inc.,
149 F.3d 1098 (10th Cir. 1998) 21-22

Roe v. Wade, 410 U.S. 113, 152, 93 S.Ct 705, 726, 35 L.Ed.
2d 147 (1973) 21

TABLE OF AUTHORITIES-Continued

CASES **Page**

Federal Cases-Continued

Silkwood v. Kerr-McGee Corp.,
464 U.S. 238, 104 S.Ct. 615, 78 L.Ed.2d 443 (1984) . . 13

Stump v. Crawford & Co.
726 F.Supp 228 (N.D. Ind 1989) 9-11

Torsky v. Avon Products, Inc.,
707 F.Supp. 942 (W.D.Mich 1988) 10

United States v. Nixon, et al.,
418 U.S. 683, 94 S.Ct. 3090, 41 L.Ed.2d 1039 (1974) . . 29

Washington v. Glucksberg,
521 U.S. 702, 117 S.Ct 2258,
138 L. Ed. 2d 772 (1997) 19, 30

Wilson v. Beloit Corp.,
869 F.2d 1162 (8th Cir.1989) 11

Wood v.County of Alameda,
875 F.Supp 659 (N.D.Cal 1995) 12-13